

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
UNITED CLASSIFIED WORKERS UNION)	CASE NO. 4134-E-82-773
OF WASHINGTON)	DECISION NO. 1507 - PECB
Involving certain employees of:)	
HIGHLINE SCHOOL DISTRICT NO. 401)	ORDER OF DISMISSAL

Robert A. Miller, Council Chairman, filed the petition on behalf of the petitioner.

Joseph A. McKamey, General Counsel, responded on behalf of the employer.

Edward A. Hemphill, Attorney at Law, represented the intervenor, Public School Employees of Washington.

On July 1, 1982, United Classified Workers Union of Washington (UCWU) filed with the Public Employment Relations Commission a petition for investigation of a question concerning representation of certain employees of Highline School District No. 401. The bargaining unit claimed appropriate includes custodial, maintenance, food service and transportation employees of the district.

On July 2, 1982, a routine inquiry was addressed to the employer, seeking a list of the employees in the bargaining unit claimed appropriate and copies of any existing collective bargaining agreements covering those employees. The employer responded by letter dated July 16, 1982 and filed on July 19, 1982, enclosing a copy of the March 5, 1981 to August 31, 1983 collective bargaining agreement between the employer and Public School Employees of Washington. The employer asserted in that correspondence that the contract should bar the petition.

Public School Employees of Highline, an affiliate of Public School Employees of Washington (PSE), was named in the petition as incumbent bargaining representative. PSE intervened in these proceedings, and has moved for summary judgment, claiming that the petition is barred by the existing contract between PSE and the employer.

In a letter dated August 2, 1982, the undersigned reviewed the documents then on file with the Commission and allowed the parties a ten-day period within

which to challenge the authenticity of those documents. The UCWU filed a substantial number of additional documents, none of which question the authenticity of the contracts identified in the August 2, 1982 letter.

DISCUSSION:

The petitioner advances two lines of argument in support of its contention that the 1981-83 contract referred to above should not be regarded as a bar to a representation election at this time. First, the petitioner contends that the contract is or has been a "five year" contract, violative of RCW 41.56.070. Second, the petitioner contends that there has been a schism within PSE, warranting direction of an election regardless of the existence of the contract.

The bargaining unit described in the petition is similar to that described in a collective bargaining agreement between PSE and the employer dated September 25, 1978 and covering the period from September 1, 1978 through August 31, 1980. A letter of agreement dated September 10, 1979 amended the terms of the 1978-80 collective bargaining agreement and extended its expiration date to August 31, 1981. An altogether new document executed on March 5, 1981 is entitled: "Contractual Agreement Between Highline School District No. 401 and Public School Employees of Highline, March 5, 1981 - August 31, 1983." Section 18.1.1 of that agreement states:

"The prior collective bargaining agreement between the parties dated September 25, 1978, and originally effective from September 1, 1978 to August 31, 1981 is rescinded as of the effective date of this Agreement."

That there may have been few substantive changes, other than wages, is irrelevant to this inquiry. The documents speak for themselves. The document executed on March 5, 1981 appears on its face to be a valid, written and signed collective bargaining agreement within the meaning of RCW 41.56.070. The petition filed July 1, 1982 is untimely with regard to either this agreement, which is to expire on August 31, 1983, or the earlier agreement, which was to have expired on August 31, 1981.

The documents filed by the petitioner indicate that both its chairman and its attorney are former PSE officials. Before embarking on a course of formal hearings to consider the possibility that those and other alleged facts may indicate that there has been a schism within PSE, it is necessary to determine that proof of a schism would be meaningful to the disposition of this case. Upon examination of the provisions of the National Labor Relations Act and the "schism" and "contract bar" decisions of the National Labor Relations Board in comparison to the provisions of RCW 41.56, it is concluded that the issue can be disposed of as a matter of law. In its definitive case on "schism", the NLRB stated:

"...the Board has, in connection with this case, considered possible revisions in certain of its contract bar policies bearing on or related to the issues of schism and defunctness...

We have also considered the contention...that the Board has no statutory authority to conduct an election on the basis of a schism when the contractual representative is not defunct, and hold in accord with established Board and court precedent that the Board's contract bar policies are compelled neither by the Act nor by judicial decision, but are rather discretionary rules which may be applied or waived as the facts in a given case may require in the interests of effectuating the policies of the Act. We therefore conclude that the Board has authority to direct an election on the basis of a schism, whether or not the contracting representative is defunct..." Hershey Chocolate Corporation. 121 NLRB 901 (1958) at 905. (emphasis supplied)

The instant case must be decided under the provisions of the Washington Public Employees Collective Bargaining Act, Chapter 41.56 RCW, and RCW 41.56.070 pointedly provides:

"Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement."

Our statute is clear and unambiguous. By contrast to NLRB contract bar policy, the contract bar rule applied by the Public Employment Relations Commission under Chapter 41.56 RCW is compelled by the statute. There is no room for discretionary application or waiver of the statute, and accordingly no purpose to expend limited agency resources on a hearing procedure seeking a result which is clearly precluded by the statute.

FINDINGS OF FACT

1. Highline School District No. 401 is a school district of the State of Washington and is a public employer within the meaning of RCW 41.56.
2. United Classified Workers Union of Washington has filed a petition for investigation of a question concerning representation of employees of Highline School District No. 401. Said petition acknowledges the existence of Public School Employees of Highline, an affiliate of Public School Employees of Washington, as the incumbent exclusive bargaining representative of the employees involved, and further acknowledges the existence of a collective bargaining agreement between the employer and PSE covering said employees for the period March 5, 1981 through August 31, 1983. A copy of said collective bargaining agreement has been filed

with the Commission and the authenticity thereof has not been challenged by the petitioner when afforded an opportunity to do so.

3. Public School Employees of Highline, an affiliate of Public School Employees of Washington, has intervened in these proceedings, claiming to be the incumbent exclusive bargaining representative of the employees involved.
4. Highline School District and Public School Employees have both asserted the March 5, 1981 through August 31, 1983 collective bargaining agreement as a bar to any election in this case.

CONCLUSIONS OF LAW

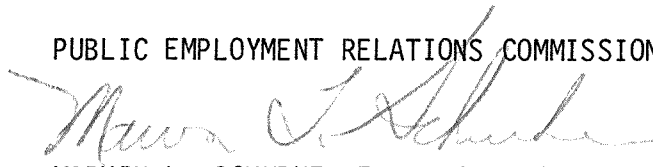
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56 and Chapter 391-25 WAC.
2. The contractual agreement between Highline School District No. 401 and Public School Employees for the period March 5, 1981 through August 31, 1983 bars consideration of the petition for investigation of a question concerning representation filed by the petitioner in this matter on July 1, 1982.

ORDER

The petition for investigation of a question concerning representation filed in the above entitled matter is dismissed.

DATED at Olympia, Washington, this 16th day of September, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director